

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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<i>In the Matter of</i>)	
)	
Amendment of Part 2 of the Commission's Rules)	
to Allocate Spectrum Below 3 GHz for Mobile)	
and Fixed Services to Support the Introduction of)	ET Docket No. 00-258
New Advanced Wireless Services, including Third)	
Generation Wireless System)	
)	
The Establishment of Policies and Services Rules)	IB Docket No. 99-81
for the Mobile-Satellite Service in the 2 GHz Band)	
)	
Amendment of the U.S. Table of Frequency)	
Allocations to Designate the 2500-2520/2670-)	RM-9911
2690 MHz Frequency Bands for the Mobile-)	
Satellite Service)	
)	
Petition for Rule Making of the Wireless)	
Information Networks Forum Concerning the)	RM-9498
Unlicensed Personal Communication Service)	
)	
Petition for Rule Making of UTStarcom, Inc.,)	
Concerning the Unlicensed Personal)	RM-10024
Communications Service)	
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**ICO GLOBAL COMMUNICATIONS
OPPOSITION TO CTIA PETITION FOR RECONSIDERATION**

ICO Global Communications (Holdings) Limited hereby opposes CTIA's petition for reconsideration of the Third Report and Order¹ insofar as that Order failed to reallocate more than 30 megahertz of the 70 megahertz allocated to the 2 GHz Mobile Satellite Service. CTIA's

¹ Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless System, *Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order*, FCC 03-16 (rel. Feb. 10, 2003), 68 Fed. Reg. 11986 (Mar. 13, 2003) (the "*Third Report and Order*").

latest petition for reconsideration contains all that same persistence and optimism that a six-year-old demonstrates when he keeps asking for candy again and again until his hapless parent finally tires of the game and gives in; and the tactic is precisely as charming coming from CTIA as it is from the average six-year-old. Unfortunately, there is some evidence that the “parent” in this situation is wearing down. ICO urges the responsible adults at the Commission to steel their resolve and deny CTIA’s petition in language that any six-year-old can understand.

CTIA claims that the Commission’s recent *Third Report and Order* “articulated no public interest rationale for retaining 40 megahertz of spectrum for MSS.”² In truth, the Commission has repeatedly articulated the public interest rationale for retaining 40 megahertz of MSS spectrum – and more – for years and years. Even before the Commission formally allocated spectrum at 2 GHz for MSS, the Commission was extremely active internationally, attempting to persuade WARC-92 and several subsequent World Radiocommunication Conferences to allocate globally harmonized (or nearly harmonized) spectrum for MSS. The 1995 NPRM proposing the domestic allocation noted that the “new allocation of spectrum for MSS should create opportunities to provide the public, *especially rural Americans*, with access to new and competitive services and technologies.”³

When the Commission finalized its domestic allocation in 1997, it found “that MSS would . . . provide another option for mobile communications, and would provide communications to underserved areas, such as rural and remote areas where PCS, cellular, and

² CTIA Petition for Reconsideration (filed April 14, 2003), at 3.

³ Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, *Notice of Proposed Rulemaking*, 10 F.C.C. Rcd. 3230, 3230 ¶ 1 (1995) (emphasis added).

other mobile services are less feasible.”⁴ In making this finding, the Commission specifically rejected Southwestern Bell’s contention that only 40 megahertz should be allocated to MSS, on the ground that “any 2 GHz MSS allocation should be as consistent as possible with the WARC-92 and WRC-95 allocations.” After Southwestern Bell filed a petition for reconsideration on this point, once again advocating 40 megahertz for MSS, the Commission reaffirmed its decision and noted, “The record contains ample evidence that MSS will need at least 70 megahertz of spectrum to meet demand.”⁵ And once again, the Commission stated that “the advent of ubiquitous MSS service will give [rural Americans] another option for mobile communications service, with the attendant benefits of robust competition among service providers.”⁶

In August 2000, with the size of the MSS allocation long settled, the Commission adopted MSS service rules, which it predicted would facilitate “new and expanded regional and global data, voice, and messaging services” that would “enhance competition in mobile satellite and terrestrial communications services, and complement wireless service offerings through expanded geographic coverage [of] unserved communities”⁷ And in July 2001, the Commission licensed eight MSS operators at 2 GHz, reiterating its belief “that the 2 GHz MSS systems will enhance competition in mobile satellite and terrestrial communications services, complement wireless service offerings through expanded geographic coverage, and promote

⁴ Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, *First Report and Order and Further Notice of Proposed Rulemaking*, 12 F.C.C. Rcd. 7388, 7395 ¶ 13 (1997).

⁵ Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, *Memorandum Opinion and Order and Third Notice of Proposed Rulemaking*, 13 F.C.C. Rcd. 23949, 23953-54 ¶ 10 (1998) (emphasis added).

⁶ *Id.*, 13 F.C.C. Rcd. at 23954 ¶ 11.

⁷ Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band, *Report and Order*, 15 F.C.C. Rcd. 16127, 16128 ¶ 1 (2000).

development of regional and global communications to unserved communities in the United States, including rural and Native American areas, as well as worldwide.”⁸

CTIA is therefore quite wrong to suggest that the Commission has failed to articulate any public interest basis for allocating 40 megahertz of spectrum to MSS rather than some lesser amount. On the contrary, the Commission has articulated the public interest basis for 70 *megahertz* of MSS spectrum time and time again since 1992, and on at least two occasions it has specifically found that the allocation should be for 70 megahertz rather than the 40 megahertz (or less) first suggested by Southwestern Bell (a parent of CTIA member Cingular) and now by CTIA. The Commission has articulated the policy foundation for its decisions on this point, and has spoken so consistently and so often over the years that everyone except CTIA must have begun to wonder why it needs to be repeated at all. As ICO argued in its own petition for reconsideration of the Commission’s order, the real mystery is how the Commission could decide to reallocate nearly half of the 70 megahertz of MSS spectrum at 2 GHz without explaining its departure from years and years of commitment to a 70 megahertz MSS allocation. Almost ten years of PCS buildout have only widened the gap between rural and urban areas in terms of mobile communications offerings, and it is difficult to imagine how the Commission can justify devoting *less* spectrum to rural and underserved areas without essentially signaling that rural Americans just matter less to this Commission.

The premise for CTIA’s latest petition is ostensibly the “pervasive evidence regarding the questionable viability of the mobile satellite service industry,”⁹ but this is nothing but a disingenuous excuse for a naked spectrum grab. Indeed, CTIA actually began making this argument *before any 2 GHz MSS operators had been licensed*, so the argument is based on the

⁸ *ICO Services Limited*, 16 F.C.C. Rcd. 13762, 13774 ¶ 30 (IB/OET 2001).

difficulties encountered by system proposals that were very different from what is now planned by 2 GHz MSS licensees. CTIA leans heavily on the comments made by ICO and other MSS interests in the Commission's rulemaking on MSS service rules, to the effect that the flexibility to re-use MSS spectrum terrestrially in urban areas is necessary in order to address some of the key weaknesses of stand-alone MSS, including poor in-building penetration. But at the risk of stating the obvious, the Commission is not obligated to cancel the spectrum allocation of every service that seeks additional operational flexibility in the rulemaking process. Moreover, the "evidence" on which CTIA relies was *also* on file before the 2 GHz MSS licenses were granted, and the Commission has already rejected the notion that the flexibility requests by ICO and others undermine the basis for the 70 megahertz of MSS spectrum. As the Commission stated then, "The Wireless Carriers provide *no credible information* to demonstrate that the findings made by the Commission [in August 2000] that 2 GHz MSS is in the public interest are called into question."¹⁰ Simply repeating the charge again and again has not strengthened CTIA's argument.

CTIA also argues that the Commission should have stated that it will reallocate additional MSS spectrum in the future whenever a 2 GHz MSS licensee defaults on its milestone obligations, thus permanently limiting each licensee to its initial 7 megahertz assignment instead of allowing for expansion by successful systems. In service of this argument, CTIA claims that the Commission once found that 3.5 megahertz in each direction would be "sufficient to sustain a viable MSS offering."¹¹ This is a gross distortion, if not outright misrepresentation. What the Commission actually found in the cited order was that 3.5 megahertz in each direction would be

⁹ CTIA Petition at 2.

¹⁰ *ICO Services Limited*, 16 F.C.C. Rcd. at 13774 ¶ 31.

¹¹ CTIA Petition at 3.

“sufficient to *commence* operations,”¹² and the Commission’s very next sentence expressly held out the possibility that successful systems would receive additional spectrum to the extent that others defaulted. The Commission has never held that 7 megahertz is the maximum amount of spectrum that should be assigned to any MSS system. Indeed, if the Commission’s August 2000 statement about the sufficiency of the MSS spectrum meant what CTIA claims it means, then the Commission’s 1995 statement about the sufficiency of the broadband PCS allocation would presumably mean that there is no need for any further terrestrial spectrum.¹³

The foregoing is sufficient to demonstrate that CTIA’s latest petition for reconsideration must be denied. However, because CTIA has stubbornly refused to accept the Commission’s successive rejections of this same argument, including the denial of CTIA’s last petition for reconsideration on this point, a few words about section 1.429(i) of the Commission’s rules are in order. Section 1.429(i) states that the Commission may grant petitions for reconsideration in whole or in part, but decisions that deny petitions for reconsideration are not themselves subject to reconsideration except “to the extent” that they modify any pre-existing order. Petitions that seek a second reconsideration of matters on which reconsideration has already been denied “may be dismissed by the staff as repetitious.”¹⁴

¹² Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band, *Report and Order*, 15 F.C.C. Rcd. at 16139 ¶ 17 (emphasis added).

¹³ Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *First Report*, 10 F.C.C. Rcd. 8844, 8845 ¶ 4 (1995) (“the Commission’s [broadband PCS] spectrum allocation provides sufficient spectrum to ensure at least three, and possibly as many as six, new competitors”); Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, *First Report and Order and Second Notice of Proposed Rule Making*, 10 F.C.C. Rcd. 4769, 4781 ¶ 19 (1995).

¹⁴ 47 C.F.R. § 1.429(i).

For several years now, the Commission has given thoughtful (indeed, perhaps overly deliberate) consideration to the question of what MSS licensees should be permitted to do in MSS spectrum. Very early on, CTIA attempted to convert this into an opportunity to ask the Commission to reallocate MSS spectrum for terrestrial services. In May 2001, CTIA filed a petition for rulemaking, asking the Commission to reallocate all of the 2 GHz MSS spectrum for terrestrial use, and to refuse to issue any 2 GHz MSS licenses until its rulemaking petition was resolved. The Commission properly licensed the 2 GHz MSS operators anyway, and in August 2001, the Commission denied CTIA's petition,¹⁵ except to the extent that it might later decide to reallocate 10-14 megahertz of MSS spectrum.¹⁶ In October 2001, CTIA sought reconsideration of the August 2001 denial of its request for reallocation of all 70 megahertz of MSS spectrum, and then cited its own reconsideration petition as a basis for refusing to give any further consideration to the MSS flexibility issue. The attempt at hostage-taking ended in rejection for CTIA, when the Commission found in its recent *MSS Flexibility Order* that there was no reason to defer action on MSS flexibility pending the resolution of CTIA's petition.¹⁷ Most recently, in the *Second Memorandum Opinion and Order* issued in *this* proceeding, the Commission denied CTIA's October 2001 petition for reconsideration of the reallocation question.

¹⁵ Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 16 F.C.C. Rcd. 16043, 16055 ¶ 23 (2001) ("We deny, however, CTIA's petition for rulemaking insofar as it requests reallocation of the entire 2 GHz MSS band and a delay in authorizing of 2 GHz MSS systems.").

¹⁶ *Id.*, 16 F.C.C. Rcd. at 16055 ¶ 24.

¹⁷ Flexibility for Delivery of Communications by Mobile-Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band, *Report and Order*, __ F.C.C. Rcd. ____, FCC 03-15 (rel. Feb. 10, 2003) ¶¶ 254-258.

CTIA now seeks reconsideration of the reallocation decision reached in the *Third Report and Order*. Specifically, CTIA asks the Commission once again to justify “from the ground up” an MSS allocation that has been justified again and again for more than ten years. CTIA seems to take no notice of the fact that the *Third Report and Order* was issued the very same day, and included in the very same document, as the *Second Memorandum Opinion and Order* that denied CTIA’s *last* petition for reconsideration of this same point. Indeed, CTIA even has the temerity to *cite one of its already-denied petitions as support for this one*.¹⁸ Thus, when the Commission denies this latest CTIA petition for reconsideration, it should make sure that CTIA knows this is really, really, *really* the last time the Commission will entertain its arguments that the MSS allocation at 2 GHz should be reduced.

In conclusion, CTIA’s belief that the 2 GHz MSS allocation should be less than 40 megahertz – potentially much less – is as wrong now as it was each time the Commission rejected it in the past. The petition should be dismissed as repetitious, or in the alternative, denied in meticulous detail, preferably in words that would be comprehensible to the average six-year-old.

Respectfully submitted,

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¹⁸ CTIA Petition at 2 n.4.

CERTIFICATE OF SERVICE

I, Kellie J. Rollman, hereby certify that on this 14th day of May 2003, the foregoing Opposition To CTIA Petition for Reconsideration was filed electronically on the FCC's Electronic Comment Filing System and was served via first-class mail, postage pre-paid, on the following:

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